In the High Court for the States of Punjab and Haryana, at Chandigarh.

C.R.No.1347 of 2007 (O&M)
Decided on March 13,2007.

Krishan Kumar Goel and others --- Petitioners

vs.

Suresh Kumar and others --- Respondents.

Present: Mr. Ashok Gupta, Advocate, for the petitioners

Pritam Pal,J: (Oral)

This revision petition, by some of the defendants (hereinafter referred to as the 'Petitioners'), is directed against order dated January 04,2007, passed by learned Addl. Civil Judge (Senior Division), Ambala Cantt, whereby an application filed by defendant No.1, under Section 92(1) CPC for dismissing the suit filed by the plaintiff-respondents under Section 92 of Code of Civil Procedure, was dismissed.

Without going into any further details, suffice it to say that the respondents/plaintiffs had filed a suit under Section 92 of Code of Civil Procedure, for removing the present Trustees, appointing new Trustees, rendition of accounts and directing the Trustees to apply the income of trust property for the object of the Trust and to fulfill the object of the Trust known as “Basheshar Nath Trust, Ambala Cantt”. With the said suit, an application for obtaining 'leave of the Court' was also filed,but due to inadvertence, the suit was registered and notice was issued to the petitioners/defendants. Thereafter, they moved an

application for dismissing the suit as no permission of the Court, was obtained for filing the suit, as required under section 92 of Code of Civil Procedure. Now the contention of learned counsel for the petitioners/defendants is that since no permission was granted by the learned trial Court to file the suit under Section 92 of Code of Civil Procedure ,therefore, the suit was not maintainable. In support of his contention, reliance has been placed in case Thakardawara, Patiala and others v. Nagar Singh and others (1998-3) P.L.R 81. Against this, learned trial Court has mainly relied upon case law in R.M. Narayana Chettiar and another v. N. Lakshmanan Chettiar and others, AIR 1991 Supreme Court 221 and Sant Lal v. Sudakar and others (2000-2) P.L.R. 73, wherein such requirement of granting leave before filing the suit, was not taken to be mandatory, if such an application for dismissing the suit is moved after a considerable period. It appears that the case in hand was filed in the year 2002 and the application for dismissing the suit for non-fulfillment of requirement of provisions of Section 92 of Code of Civil Procedure, was filed in the year 2006. Not only that, the learned trial Court after declining the application filed by the petitioner/defendant No.1, has now fixed the case for filing reply and arguments on the application moved under Section 92 of Code of Civil Procedure.

In the given facts and circumstances, this Court does not find any illegality or infirmity in the impugned order. Hence, this Civil Revision is hereby dismissed in *limine*.

March 13,2007 (Pritam Pal)
RR Judge